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WP.Nos.12420, 84 of 2022 and 2298 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.12420, 84 of 2022 and 2298 of 2021
and
WMP.Nos.11885, 81 of 2022 and 2599 of 2021

WP.No.12420 of 2022

M/s.Kannith Suppliers

Represented by its Proprietor Mr.Sandip Agarwal

... Petitioner

Vs.

1. The Deputy Commissioner,
Goods and Service Tax
Office of the Principal Commissioner
of CGST and Central Excise,
Headquarter Preventive Unit,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai -600 034.
2. C.Ramasubramaniam,
(Erst While Resolution Professional of
M/s.SLO Industries Ltd.,
No.1L, Blackers Road, Mount Road,
Chennai-600 002.



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3. Union Bank of India,
SAMV Branch,
Sole Member of Committee of Creditors,
M/s.SLO Industries Limited,
No.38 and 39, Whites Road,
Royapettah, Chennai-600 014.

4. CA.S.Palaniappan
Liquidator M/s.SLO Industries Ltd.,
No.B5, Patteswar Park North Block,
Dr.Ramasamy Layout,
Velandipalayam,
Coimbatore-641 025.

... Respondents

WP.No.84 of 2022

M/s.SLO Industries Ltd.,
Represented by its RP,
Mr.C.Ramasubramaniam

... Petitioner

Vs.

1. Assistant Commissioner (ST),
Review and Appeal, Zone-II,
Chennai-600 003.
2. Assistant Commissioner (ST),
Thiruvottiur Assessment Circle,
Chennai-3.
3. The Deputy Commissioner,
Office of the Principal Commissioner
of CGST and Central Excise,
Headquarters Preventive Unit,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai -600 034.



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4. Anil Kumar Ojha,
S/o.Late Sohanlal Ojha,
No.2, Lakshmi Street, Kilpauk,
Chennai-600 010.
(R4 Impleaded vide Order dated
05.09.2022 made in
WMP.17717 of 2022 in
WP.84 of 2022)

... Respondents

WP.No.2298 of 2021

M/s.SLO Industries Ltd.,
Represented by its RP,
Mr.C.Ramasubramaniam

... Petitioner

Vs.

1. Assistant Commissioner (ST),
Review and Appeal, Zone-II,
Chennai-600 003.
2. Assistant Commissioner (ST),
Thiruvottiur Assessment Circle,
Chennai-3.
3. Office of Deputy Commissioner (ST),
Zone-II, Chennai-3.

... Respondents

Prayer in WP.No.12420 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India, pertain to the notice of 1st respondent in proceeding No.in GEXCOM/AE/INV/5521-AE-O/o.Pr.Commr-CGST-CHENNAI (N)



dated 04.01.2022, call for records and quash the same with the direction to 2nd and 3rd respondent to make the payment of GST liability of Company.

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Prayer in WP.No.84 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to allow the petitioner to allow filing of the Return-GSTR3B by allowing the utilisation of the blocked Input Tax Credit in the electronic credit ledger for payment of GST liability, without insisting on the interest and or penalty.

Prayer in WP.No.2298 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, calling for the records of the 1st respondent in his proceedings leading to passing of the impugned order vide Notice of Intimation dated 15.10.2020, GSTIN 33AAICS5453QIZR, quash the same and direct the respondent to release the Input tax credit in the electronic credit ledger.

WP.No.12420 of 2022

For Petitioner : Mr.D.Vijaya Kumar

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel for R1

Mr.S.Sathyanarayanan for R2
Mr. S.Seetharaman for R3

Mr.Varun Srinivasan
for NVSR Associates for R4



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WP.No.84 of 2022

For Petitioner : Mr.S.Sathya Narayanan

For Respondents : Ms.Amirtha Poonkodi Dinakaran,
Government Advocate for R1 and R2

Mr.V.Sundareswaran
Senior Panel Counsel for R3

Mr. Anil Kumar Ojha
(Party-in-Person) -R4

WP.No.2298 of 2021

For Petitioner : Mr.S.Sathya Narayanan

For Respondents : Ms.Amirtha Poonkodi Dinakaran,
Government Advocate for R1 to R3

COMMON ORDER

W.P.No.2298 of 2021 and W.P.No.84 of 2022 have been filed by the assessee/a registrant under the provisions of the respective Goods and Service Tax Act, 2017. These writ petitions were filed by the Resolution Professional appointed by the NCLT, Chennai.

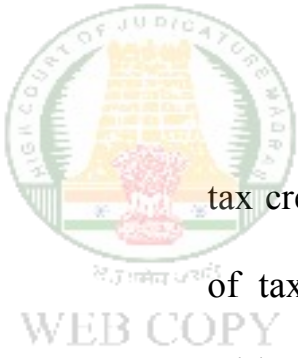


2. The said petitioner is under liquidation pursuant to the directions of the NCLT, Chennai. The 4th respondent in W.P.No.12420 of 2022 has been appointed as the liquidator by the NCLT.

3. In W.P.No. 2298 of 2021, the petitioner has challenged the notice dated 15.10.2010 bearing reference GSTIN 33AAICS5453QIZR, issued by the 1st respondent therein and for a consequential direction, to the respondents therein to direct the respondents therein to release the input tax credit lying in the electronic credit ledger of the said petitioner.

4. The said notice dated 15.10.2010 bearing reference GSTIN 33AAICS5453QIZR, was issued under Rule 86-A (1) (a) and (c) of the TNGST Rule, 2017 on the ground that the credit that was utilised to an extent of Rs.1,56,81,732/- was availed on the invoice issued by a non-existent suppliers who were not conducting any business at the registered premises.

5. The same petitioner is the petitioner in W.P.No.84 of 2022. The petitioner prayed for a direction to the respondents to allow filing of Return



tax credit in the Electronic Credit Ledger of the said petitioner for payment of tax liability under the respective Goods and Service Tax Act, 2017 without insisting on payment of interest.

6. W.P.No.12420 of 2022 has been filed by the operating creditor/supplier of goods of the petitioner in W.P.No. 2298 of 2021 and W.P.No.84 of 2022. In W.P.No.12420 of 2022, the petitioner has challenged the impugned notice dated 4.1.2022 issued to the petitioner by the Deputy Commissioner, 1st respondent therein.

7. In the said notice, the petitioner in W.P.No.12420 of 2022 has been informed that since the petitioner in W.P.No.2298 of 2021 and W.P.No.84 of 2022 had not paid applicable GST for the month of February 2021 to July 2021 input tax credit availed on the tax reflected in the invoices if the petitioner in W.P.No.2298 of 2021 and W.P.No.84 of 2022 were ineligible in view of section 16 (2) (c) of CGST Rules, 2017.



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8. The petitioner in W.P.No.12420 of 2022 has to either recover the amount from the petitioner under liquidation in W.P.No.2298 of 2021 and W.P.No.84 of 2022 or the 4th respondent liquidator in W.P.No.12420 of 2022 or defend its stand before the official respondents therein. The notice dated 04.01.2022 issued by the Deputy Commissioner, 1st respondent therein that has been impugned has not determined the liability of the said petitioner one way or the other. Therefore, W.P.No.12420 of 2022 is liable to be dismissed with the above liberty. The petitioner in W.P.No.12420 of 2022 may therefore file reply to the impugned notice dated 04.01.2022 issued by the Deputy Commissioner, 1st respondent therein .

9. As the petitioner in W.P.No.2298 of 2021 and W.P.No.84 of 2022 is under liquidation, these writ petitions filed by the Resolution Professional for the petitioner has to be closed. The 4th respondent liquidator in W.P.No.12420 of 2022 appointed by the NCLT, Chennai is liquidating the petitioner in W.P.No.2298 of 2021 and W.P.No.84 of 2022 pursuant to the directions of the NCLT, Chennai. The liquidation has not desired to pursue with the remedy in W.P.No.2298 of 2021 and W.P.No.84 of 2022.



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10. Therefore, W.P.No.2298 of 2021 and W.P.No.84 of 2022 are liable to be closed and are accordingly closed. W.P.No.12420 of 2022 is dismissed with the above liberty to the petitioner therein. No costs. Consequently, connected miscellaneous petitions are closed.

03.08.2023

Index : Yes/No
Neutral Citation : Yes/No
vv/kkd

To

1. The Deputy Commissioner,
Goods and Service Tax
Office of the Principal Commissioner
of CGST and Central Excise,
Headquarter Preventive Unit,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
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C.SARAVANAN, J.

vv/kkd

3. The Assistant Commissioner (ST),
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Thiruvottiyur Assessment Circle,
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